IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8-02-2002

CORAM:

THE HON'BLE MR. JUSTICE K. SAMPATH

S.A.No.1910 of 1989

Rajasekar ... Appellant

Vs.

1. Krishnasamy
2. Palaniammal
3. Kaliammal
4. Govindasamy ... Respondents

For Appellant: ... Mrs. Bhagirathi Narayanan
For Respondents 1&4:... Mr.A.K. Kumarasamy
For Respondent 2: ... No Appearance

This second appeal is filed against the judgment and decree dated 1 5-11-1988 made in A.S.No.89/87 on the file of the Subordinate Judge, Gobichettipalayam.

: JUDGMENT
The short point for consideration is whether the plaintiff/ appellant will be entitled to a larger amount than what has been decreed by the lower Appellate Court.

2. Even according to the plaintiff, the first defendant, since deceased, was an agriculturist. If he was an agriculturist, he would be liable to pay interest only as per Act 4 of 1938 as amended by Act 8 of 1973. His case was that the first defendant borrowed a sum of Rs.10,000/- from the plaintiff's grandfather o ne Ramasamy Chettiar and executed a mortgage deed agreeing to pay interest at 12% per annum and agreeing to the other usual conditions as stipulated in the mortgage. Ramasamy Chettiar executed a Will dated 10-9-1969 and the plaintiff became entitled to the mortgage deed as per the Will. The deceased first defendant had paid interest up to April, 1974. Notice was issued to him on 29-10-1980. In spite of repeated requests and notice, he had not paid the amount. He was not entitled to the benefits of the Debt Relief Act. He was an agriculturist and a big farmer and interest at 9% per annum was claimed. Pending suit the first defendant died and his legal representatives came on record.

3. The fifth defendant filed a written statement contending that, even according to the plaintiff, till April, 1974 the first defendant had paid interest and therefore, he could not claim any dues as per Act 4 of 1938 as amended by Act 8 of 1973, that is to say, that whatever amount, in respect of a debt incurred prior to 1-2-1972, had been paid either towards principal or towards interest should go towards discharge of the principal and the first defendant had paid interest in a total sum of Rs.6000/- and this amount ought to have been deducted from the principal amount and the suit as prayed for was not maintainable.

4. On the above pleadings, the trial Court held that the suit was maintainable, that defendants 2 to 5 could not claim the benefits of Act 4 of 1938 as amended by Act 8 of 1973 and when, according to the plaintiff, interest till 1974 had been paid, it should be deemed that it was paid at 6% and not at 12% as claimed. However, since the mortgage deed provided for 12% interest, it must be deemed that the first defendant had paid at the rate of 12% per annum and in as much as the plaintiff himself had accepted that the first defendant was an agriculturist, he was liable to pay only interest at 9% per annum and the excess interest of 3% had to be deducted from the principal amount and so holding by judgment and decree dated 21-9-1987 decreed the suit for Rs.8500/- payable with interest at 9% and further provided that in case the amount was not paid within two months, the plaintiff was at liberty to proceed further for bringing the property belonging to the defendants to sale.
5. The defendants filed appeal in A.s.No.89/87 before the Sub Court, Gobichettipalayam. The learned Subordinate Judge held that defendants 2 to 5 were also entitled to the benefits of Act 4 of 1938 as amended by Act 8 of 1973. The learned Subordinate Judge further held that on the plaintiff's own admission, he had received interest up to 1 974 and the rate fixed under the mortgage deed was 12% and it must be deemed that the first defendant had paid Rs.6000/- and as he was an agriculturist, this amount should go in discharge of the principal and only the balance amount of Rs.4000/- would be due and this amount the defendants were liable to pay with interest at 6-1/2% per annum, failing which further proceedings for sale could be taken. It is as against that, the present second appeal has be en filed.

6. At the time of admission the following substantial question of law was raised for decision in the second appeal:

"Whether the judgment of the lower Appellate Court is vitiated by its failure to consider all the relevant evidence on record and apply the correct principles of law?"

7. When the plaintiff himself admits that the first defendant was an agriculturist and had also claimed interest at 9% per annum in conformity with Act 4 of 1938 as amended by Act 8 of 1973, it would not be open to the plaintiff to contend that the benefits of Act 4 of 1938 as amended by Act 8 of 1973 would not be available to the first defendant.

8. So far as the other defendants are concerned, it is settled law that,

"the right to claim relief under Act 4 of 1938 as amended by Act 8 of 1973 is not confined to the person, who actually contracted the debt, but is available equally to person who is liable on account of the possession of property or a person who comes under the liability by devolution provided of course that such person is agriculturist as defined by the Act even though the original debtor was not an agriculturist or was disqualified from claiming relief under the Act.
Where the original liability was incurred by the debtor under a pronote executed prior to 1st October, 1932 and the debtor's sons succeeded to his estate after 1st October, 1932, such succession cannot be the basis of a new liability. The sons' liability is traceable only to the original transaction and therefore the debt is liable to be scaled down as of debt under the provisions of the Act." (See KONA HASAN FATHIMA BIVI & OTHERS VS. MUHAMMAD MUHAIDEEN NACHIAR & OTHERS (AIR 1 943 Madras 87) and CHERUM NAGESWARASWAMI VS. VADREVU VISWASUNDARA RAO & OTHERS (AIR 1953 SC 370)).

9. The learned Counsel for the plaintiff vehemently submitted that the defendants should establish that they were entitled to the benefits of Act 4 of 1938 as amended by Act 8 of 1973. When it is conceded that the first defendant was an agriculturist, it was up to the plaintiff to show that he came within one of the exceptions provided under the Act to disentitle him to the benefits of the Act. There is no material placed by the learned Counsel for the appellant for me to take a view different from the one taken by the lower Appellate Court. (See ARUMUGHA NADAR VS. KUMARA PILLAI (1981-2 MLJ 35 = 94 LW 278 = 1 981 TLNJ 3).

10. The lower Appellate Court has considered all the materials on record and has come to the right conclusion. There is no error of law warranting interference. The substantial question of law is answered against the appellant. The second appeal fails and the same is dismissed. There will be no order as to costs.

8-02-2002
Index: Yes
IGP

Sd.
Assistant Registrar

/True Copy/

Sub Assistant Registrar

1) The Subordinate Judge,
Gobichettipalayam (with records).
2) The District Munsif,
Bhavani.
3) The Record Keeper, V.R. Records,
High Court, Madras.

K. SAMPATH, J.

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